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case.

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**IN THE  
COURT OF APPEALS OF INDIANA**

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M. CATHY OSTLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A02-0511-CR-1044
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE HAMILTON SUPERIOR COURT  
The Honorable Steven R. Nation, Judge  
Cause No. 29D01-0408-FC-80

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**August 28, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

M. Cathy Ostler appeals the revocation of her probation and the execution of her previously suspended sentence. Ostler presents the following restate issue for review: Did the trial court abuse its discretion in ordering her to serve the balance of her sentence upon revoking her probation?

We affirm.

The facts favorable to the judgment are that on August 9, 2004, Ostler was charged with operating a vehicle while intoxicated in a manner that endangers another person, as a class A misdemeanor, and operating a vehicle after her license had been suspended for life, as a class C felony. On January 14, 2005, Ostler and the State entered into a plea agreement calling for the State to dismiss the operating while intoxicated charge in exchange for the following sentence:

Five (5) years in the Indiana Department of Corrections, with two (2) years executed and the balance suspended. Defendant given credit for all time served. Balance of the executed time shall be served as a direct commitment to Work Release. Court costs imposed. No fine. Defendant shall be placed on probation for a period of two (2) years, under such terms as the Court may impose, but including conditions that the Defendant shall: 1) attendance and successful completion of the CARE program, complying with all recommended treatment [sic]; 2) perform 30 hours of community work service per year of probation.

*Appellant's Appendix* at 26. The trial court accepted the agreement and imposed sentence consistent with the foregoing terms of the agreement.

On March 3, 2005, Ostler was living in the Hamilton County Community Corrections facility (HCCC). On that day, she received permission to leave HCCC in order to seek employment. Ostler turned in a form indicating she would visit Pet

Supplies Plus, Deals, and Goodwill, all located at the intersection of Pleasant Street and State Road 37 in Noblesville, Indiana. Ostler was permitted to go on the conditions that she visit only the indicated businesses, that she phone in her location as she went from one place to the other, and that she return to HCCC by 11:00 a.m. Also, she was forbidden from visiting private residences. When she was ready to leave Pet Supplies Plus, the store was not open, so Ostler phoned HCCC with the manager's cell. Next, she went to Goodwill, where she was hired on the spot. She left Goodwill without calling HCCC to notify it of her location change. While walking, she met acquaintance Mary Hurdle, who also was at HCCC and out looking for a job. Ostler twice asked to use Hurdle's cell phone, but Hurdle refused both requests. The two went to Firestone, where Hurdle filled out an employment application. Firestone personnel refused Ostler's request to use a company telephone.

Robert Mullins and Marcia Peevey were caring for Ostler's pet while Ostler was at HCCC. They lived near the Firestone facility, so Ostler decided to go there to phone HCCC. After she arrived, Ostler placed two calls to HCCC using a cell phone at Mullins's, one at 10:14 and one at 10:26. In the first call, Ostler falsely claimed she was leaving Goodwill and proceeding to PetSmart. In the second call, she falsely claimed that she was leaving PetSmart and returning to HCCC. Both phone calls from Mullins's residence were placed using a phone registered to a Douglas Mann, a friend of Mullins's.

On March 8, 2005, as a result of the above incident, Ostler was moving from HCCC to the Hamilton County Jail and was given a bag in which to place her personal

property. The bag ripped, so she put cigarettes, a lighter, and various personal hygiene items in a Kotex bag, which she then placed inside a larger bag. When she arrived at the jail, Ostler indicated that she needed her personal items, so jail personnel placed her shampoo, deodorant, and the Kotex bag in a basket, which she carried to her cell. When Ostler was inside her cell, she realized the cigarettes were still in the Kotex bag and were classified as contraband at the jail. Another inmate offered to take them, and Ostler gave them to her. Thereafter, Ostler left her cell and the jail was locked down. When she returned to her room, the cigarettes and lighter were laying on her bed in a plastic baggie. To hide them from the guard standing near her, Ostler inserted the items into her vagina. A subsequent search of her room uncovered what Ostler claimed were Advil tablets, but a guard told her they were not the color or size of Advil tablets. She was told to give up her contraband and initially refused. When she was told she would be charged with a class D felony if they were forced to conduct a body cavity search, she pulled the cigarettes and lighter out of her vagina.

On March 9, 2005, the State filed a notice of probation violation. Ostler admitted at the probation violation hearing that she had been in two places where she was not supposed to be, and that she had lied about it. The trial court found that she had violated the conditions of her probation and executed the suspended portion of her sentence.

Probation revocation is a two-step process. *Sanders v. State*, 825 N.E.2d 952 (Ind. Ct. App. 2005), *trans. denied*. The court first must make a factual determination that the defendant violated a condition of probation. *Id.* Upon a finding that a violation occurred,

the second step requires the trial court to determine if the violation warrants the revocation of probation. *Id.* When, as here, a probationer admits violating probation, the court proceeds to the second step of the inquiry and determines whether the violation warrants revocation. *Id.* A decision to revoke probation is reviewed for an abuse of discretion. *Podluský v. State*, 839 N.E.2d 198 (Ind. Ct. App. 2005). An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. *Rosa v. State*, 832 N.E.2d 1119 (Ind. Ct. App. 2005). Revocation is appropriate if it is established that the probationer committed any violation of the terms of probation, as the violation of a single condition of probation is sufficient to permit revocation. *Id.* When reviewing such decisions, we consider only the evidence most favorable to the judgment and do not reweigh the evidence or judge witness credibility. *M.J.H. v. State*, 783 N.E.2d 376 (Ind. Ct. App. 2003), *trans. denied*.

Ostler admitted she violated the conditions of probation, but sought to explain those violations as the products of more or less innocent mistakes and circumstances beyond her control. For instance, she claimed that her failure to adhere to the call-in rules governing her job search on March 3, 2005 was the result of her inability to find a telephone from which to place the required calls. Even accepting this claim as true, the evidence shows that she did not return straightaway to the HCCC, but instead went to a business that was not on her approved itinerary, and then to a private residence, which is forbidden under any circumstances. She stayed at the residence for at least twelve

minutes – much longer than would be required to place a phone call. Moreover, when she called in from the private residence, she lied about her location, not once, but twice.

With respect to the incident involving contraband at the Hamilton County Jail, we understand that the incident was not charged as a violation of probation. Rather, evidence relating to that incidence was presented to illustrate the State's claim that Ostler was not a good candidate to continue on probation. Again, Ostler admitted to the course of conduct as alleged by the State at the revocation hearing. As with the charged violation, she proffered an innocent explanation for her actions. Even accepting her claim that she did not intend to take cigarettes into the jail in the first place, her subsequent conduct evinced the same troubling tendency for deceptive behavior that she displayed in the events of March 3, 2005. Presented with multiple opportunities to admit her allegedly innocent mistake, she chose instead to conceal the contraband and lie about its existence.

This court has often observed that probation is a matter of grace and a conditional liberty that is a favor, not a right. *See, e.g., Taylor v. State*, 820 N.E.2d 756 (Ind. Ct. App. 2005), *trans. denied*. The terms of probation are imposed not only to safeguard the general public, but also to mold law-abiding citizens. *Cox v. State*, 792 N.E.2d 878 (Ind. Ct. App. 2003). We agree with the trial court's observation that a good candidate for probation must display, at a minimum, a willingness to abide by the rules and a penchant for dealing honestly with law enforcement officials in general and his or her probation supervisors in particular. Ostler has, as illustrated in the two episodes set out above,

displayed a tendency to do the opposite. Accordingly, we conclude the trial court did not abuse its discretion in revoking Ostler's probation and executing the suspended portion of her sentence.

Judgment affirmed.

BARNES, J., and MATHIAS, J., concur.